

This is in response to the petition of the American Teleservices Association asking the FCC to preempt New Jersey's Consumer Fraud Act and New Jersey's Administrative Code as it relates to telemarketing. I strongly oppose such an action by the FCC as it is well established that states may enact tougher laws than the federal government so long as the state laws do not conflict with federal law. The TCPA and FTC Acts, and the rules promulgated pursuant to those acts, set floors and not ceilings. There is nothing in the history of either act, or in any case law I am aware of, that suggests that either the TCPA or FTC Act were intended to preempt state law. In fact, in promulgating the Do Not Call list, the FTC specifically chose to preempt only the use of state registries that did not include the relevant portions of the federal DNC registry. It would appear that the commissions have already stated, even if merely implicitly, that neither had any intention of preempting state regulation of telemarketing, except for the DNC registry to be used.